Nos. 80-193, 79-1943

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

HENRY BUCZYNSKI, et al., *Petitioners,*

v.

THE GENERAL MOTORS CORPORATION, *Respondent.*

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

JOSEPH ALESSI, et al., *Appellants,*

v.

RAYBESTOS-MANHATTAN, INC., et al., *Appellees.*

On Appeal From the United States Court of Appeals for the Third Circuit

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF THE CHAMBER OF COMMERCE OF THE UNITED STATES IN SUPPORT OF RESPONDENT AND APPELLEES

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MOTION OF THE CHAMBER OF COMMERCE OF THE UNITED STATES FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT OF RESPONDENT AND APPELLEES

The Chamber of Commerce of the United States of America ("Chamber"), pursuant to Rule 36 of this Court, hereby moves for permission to file a brief

amicus curiae in support of the Appellees, Raybestos-Manhattan, Inc. and Raybestos-Manhattan, Inc. Employee Retirement Plan, in No. 79-1943, and the Respondent, General Motors Corporation, in No. 80-193.

In support of its Motion, the Chamber states:

1. The Chamber regularly represents the views of its more than 100,000 business members in litigation pending before this Court and the lower Federal and State courts on a broad range of issues, including matters related to the interpretation and implementation of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.*[1]

2. In addition, the Chamber has regularly represented its views to the United States Congress, the Treasury Department and the Department of Labor on the various facets of ERISA administration and enforcement which affect the Chamber's members who are plan sponsors and plan administrators.

3. The instant cases present substantial questions of direct concern to the Chamber and its members who are subject to ERISA. First, many plans sponsored or administered by Chamber members provide for the integration of benefits provided by one or more employer financed compensation plans with benefits provided from pension plan assets.[2]

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[1] For example, the Chamber filed a brief *amicus curiae* in support of the pension plan sponsor in *Daniel* v. *Teamsters*, 439 U.S. 551 (1979); and intervened in *Trombly* v. *Marshall*, No. 7915-75 (D.D.C. 1980), in support of the proposition that disclaimer statements in Summary Plan Descriptions are permitted by ERISA.

[2] Although the Chamber does not know the number of pension plans which specifically provide for integration of workmen's compensation benefits, for purposes of this Motion, the Chamber ac-

Second, the Chamber believes that the congressional intent underlying ERISA is best reflected, and the interest of plan sponsors, administrators, participants and beneficiaries are best served, by considering the interrelationship of the various types of employer-financed compensation benefits; and the Chamber rejects the fragmented and piecemeal analysis which underlies Appellants' and Petitioners' arguments.

Third, the Chamber and its members, many of which are multi-state enterprises, support the expansive preemption provision of ERISA, which ensures a consistent and harmonious interpretation and administration of employee benefit programs. The Chamber and its members are concerned that the broad meaning intended for this provision should be preserved, and not suffer the erosion which Appellants and Petitioners would permit, contrary to the intent of Congress.

For the foregoing reasons, and the reasons more fully set forth in the accompanying brief, the Chamber respectfully requests that its Motion be granted.

Respectfully submitted,

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cepts the representation of Appellants, that there are more than 7,000 plans in force which contain such a provision. *See,* Brief of Appellants at 19, n.15.

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BRIEF AMICUS CURIAE OF THE CHAMBER OF COMMERCE OF THE UNITED STATES IN SUPPORT OF RESPONDENT AND APPELLEES

STATEMENT OF INTEREST

The Chamber of Commerce of the United States of America ("Chamber") is the largest federation

of business, trade and professional organizations and individuals in the United States and, as such, is the principal spokesman for the American business community.

The Chamber has a direct membership of over 100,000 corporations, partnerships, proprietorships, and professionals, as well as over 3,700 state and local chambers of commerce and professional and trade associations.

The Chamber regularly represents its members' interests in litigation matters before the courts, including issues related to the implementation and interpretation of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.*[1] The Chamber also represents its members before the United States Congress, the Executive Branch and Federal regulatory agencies concerning matters of interest to the American business community, including issues relating to the administration and interpretation of pension and welfare plans. Such representation constitutes a significant aspect of the Chamber's activities.

The underlying issues in the present cases are of direct and substantial interest to the Chamber and its members.

First, many pension plans sponsored or administered by Chamber members provide for the integration of benefits provided by one or more employer-

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[1] *Daniel* v. *Teamsters*, 439 U.S. 551 (1979); *Trombly* v. *Marshall*, No. 7915-75 (D.D.C. 1980) (intervenor-defendant in support of proposition that ERISA permits disclaimer statements in Summary Plan Descriptions); *Upjohn Co.* v. *United States*, No. 79-886 (January 13, 1981); *American Textile Mfg. Institute, Inc.* v. *Ray Marshall*, Nos. 79-1429, 79-1583, 79-1789.

financed compensation plans, such as social security and workmen's compensation, with benefits provided from the pension fund.[2]

Second, it cannot be gainsaid that litigation involving the meaning and interpretation of ERISA is just beginning to wend its way through the federal courts. At this seminal stage of the development of Supreme Court case law in this area, the Chamber believes that these cases present an opportunity for this Court to provide guidance to the lower federal courts by ruling that, where appropriate, ERISA issues should be decided in the interest of the interrelated forms of employer funded income paid during retirement. And, in these cases in particular, where the pension plans which have given rise to this litigation are the product of collective bargaining, this judicial focus may be more appropriate.

Third, Petitioners and Appellants here raise the unfortunate spectre of possible judicial contraction of the plain words and legislative history which underlies the preemption provision of § 514 of ERISA, 29 U.S.C. § 1144(a). The Chamber believes that it is critical to the sound and orderly administration of both pension and welfare plans that there be but one set of rules which govern; namely, those contained in ERISA and the duly promulgated regulations issued thereunder. Any other result is not in the best interest of plan sponsors, administrators, participants or beneficiaries.

It is for these reasons that the Chamber respectfully submits its views.

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[2] Indeed, as noted by Appellants there may well be some 7,000 plans which specifically provide for the integration of workers' compensation benefits.

SUMMARY OF ARGUMENT

Despite the extensive revisions introduced in employee benefits law by the Employee Retirement Income Security Act of 1974, it neither compels employers to establish private retirement programs, nor mandates that parties could *not* agree to consider income benefits from other employer financed sources in determining private retirement income.

This method of determining the level of private retirement income under the plan was permissible prior to ERISA's enactment, and ERISA's legislative history, as well as subsequent regulatory and legislative events, demonstrates its continued vitality.

In addition, other policy considerations militate in favor of the practice. First, both plans being challenged in this case were collectively bargained, and the policy considerations underlying the National Labor Relations Act argue in favor of permitting bargaining parties to choose how post-retirement income needs are best met, considering the costs which the plan sponsor is willing to incur. Second, several Federally appointed study groups have favored coordination of employer funded benefit packages.

Since ERISA permits integrating retirement benefits with workers' compensation benefits, the plan provisions are valid notwithstanding New Jersey's Workers' Compensation Statute. That statute is superceded by ERISA's preemption of all state laws "relating to" employee benefit plans.

ARGUMENT

I. ERISA's Statutory Terms, Legislative History and Regulatory History Permit Offsets in Computing Benefits.

The issue before this Court is whether the provisions of a defined benefit, employer funded retirement plan, which require integration with employer funded amounts paid under workers' compensation programs, works an illegal forfeiture of vested rights under Section 203(a) of ERISA, 29 U.S.C. § 1053(a). In framing their arguments both below and before this Court, both Appellants and Petitioners have muddled the terms "vested," and "nonforfeitable." Their error is the product of their misapprehension of concepts which were embodied in pre-ERISA pension law, and which have remained fundamentally unchanged by ERISA.

As a legal principle, then, the Chamber maintains that employers remain free to choose the benefit formulas to be incorporated in their plans.

A.

Our analysis begins, as it must, with reference to § 203(a) itself, which provides that an employee's right to his normal retirement benefit must be nonforfeitable at normal retirement age. But neither that provision, nor any other section of ERISA, prescribes the amount of benefits which must be provided by a plan. That decision is left to the plan sponsor and, in these cases, to the collective bargaining process.

Rather, ERISA describes a normal retirement benefit as the benefit *"under the plan."* ERISA, § 3(22), 29 U.S.C. § 1002(22) (emphasis added). Moreover,

> The term "nonforfeitable" when used with respect to a pension benefit or right means a claim obtained by a participant or his beneficiary to that part of an immediate or deferred *benefit under a pension plan* which arises from the participant's service, which is unconditional, and which is legally enforceable against the plan.

ERISA, § 3(19), 29 U.S.C. § 1002(19) (emphasis added).

In computing the *amount* of the retirement benefit one must look to the terms of the plan. It follows that in determining the amount of the *nonforfeitable* benefit, one must also look to the plan. Thus, Petitioners correctly state that "[u]nder [GM's] plan, a participant who completes ten years of service has at that moment, a vested, nonforfeitable right to receive, when he attains normal retirement age, all retirement benefits derived from employer contributions which he has accrued to that period." Petitioners' Brief at 9. This, however, is merely the beginning of the inquiry, for the next level requires examination of the plan benefit formula, which in these cases includes years of covered service, age, *and* amount received from *employer* funded workers' compensation benefits.[3]

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[3] Thus, the GM plan provides:

> Section 2. Deductions for Workmen's Compensation in determining the monthly benefits payable under this Plan, a deduction shall be made unless prohibited by law, equivalent to all or any part of Workmen's Compensation (including compromise or redemption settlements) payable to such employee by reason of any law of the United States, or any political subdivision thereof, which has been or shall be en-

That the computation of the amount of the defined benefit, including any offsets, is controlled by the plan itself is buttressed by this Court's recent close scrutiny of the phrase "nonforfeitable benefit" contained in Title I of ERISA. In *Nachman Corp.* v. *PBGC*, U.S. , 64 L.Ed.2d 354 (1980), the sponsoring employer of a terminated plan asked this Court to construe Section 3(19) of ERISA. In that case, this Court held[4] "it is the *claim* to the benefit, *rather than the*

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acted, provided that such deductions shall be to the extent that such Workmen's Compensation has been provided by premiums, taxes or other payments paid by or at the expense of the Corporation, except that no deduction shall be made for the following:

(a) Workmen's Compensation payments specifically allocated for hospitalization or medical expense, fixed statutory payments for the loss of any bodily member, or 100% loss of use of any bodily member, or payments for loss of industrial vision.

(b) Compromise or redemption settlements payable prior to the date monthly pension benefits first become payable.

(c) Workmen's Compensation payments paid under a claim filed not later than two years after the breaking of seniority.

Similarly, the Raybestos offset provision reads:

All Retirement Income payments shall be reduced by the entire amount of any and all payments the Member is eligible to receive under any and all statutes pertaining to workmen's compensation, occupational disease, unemployment compensation, cash sickness benefits, and similar laws, other than primary Social Security benefits, presently in effect or which may be enacted from time to time, which payments are paid concurrently with the Retirement Income.

[4] The provisions of the plans at issue here are quite dissimilar to the terms of the *Nachman* plan, in that, the *Nachman* plan "provided for the payment of monthly benefits computed [solely] on the basis of age and years of service at the time of retirement." *Id.* at 360. And, an undisputed fact in that case was that "[a]t that time 135 employees had accrued benefits with an average value of approximately $77 per month. Those benefits were concededly vested in a contractual sense." *Id.* at 361.

benefit itself, that must be 'unconditional' and 'legally enforceable against the plan.' " *Id.* at 365-66 (emphasis added). In addition, the Court went on to observe that, "[i]t is . . . surely consistent with the statutory definition of 'nonforfeitable' to view it as describing the *quality* of the participant's right to a pension rather than a limit on the amount he may collect." *Id.* at 365 (emphasis added).

In the instant cases, unlike *Nachman,* there is no attempt to divest employees of vested benefits. *See,* note 4, *supra.* And it is undisputed that Petitioners and Appellants have *claims* for benefits. Nor is there any attempt to diminish, in any way, the quality of their claims. The employers stand ready and willing to pay *all* of the benefits to which the participants are entitled under their respective plans. Their sole objection is to paying benefits in addition to those negotiated under their collective bargaining plans.

A recent decision of the Sixth Circuit illustrates its misunderstanding of the statutory scheme described *supra,* as well as this Court's decision in *Nachman.* In *Utility Workers' Union, et al.* v. *Consumers Power Co., et al.,* No. 78-1402 (6th Cir. Jan. 6, 1981), *petition for recon. en banc pending,* Judge Peck wrote:

> When Congress enacted ERISA, it was concerned about employees who, after years of service to their employers, were denied pension benefits on account of their pension plan's restrictive *vesting* provision. In the Act, Congress intended to provide these employees with guarantees that, after they had completed certain required years of service, they would gain unconditional rights to fixed pension benefits. Accordingly, Congress incorporated into Section 203 of ERISA a broad proscription against *forfeitures* . . . .

Slip Opinion, p. 9 (emphasis added).

With due respect to the Sixth Circuit, it is submitted that the majority makes the same mistake as Petitioners and Appellants in these cases. It is simply incorrect to conclude that because Congress prohibited *forfeitures*, it proscribed a benefit formula which requires *reductions* of other employer funded benefits.

Further, review of the statutory scheme of ERISA, as well as the legislative and regulatory history which surround the statute's enactment, further support the proposition that the integration of workmen's compensation benefits is permissible.

The statutory scheme of ERISA is marked by purposeful specificity where Congress so intended, and general provisions where Congress determined that the discretionary powers of plan sponsors and the collective bargaining process, where applicable, would be most appropriately exercised.

Thus, for example, Title I of ERISA requires that plans adopt amending language designed to create new safeguards in several important areas. It enhanced participants' prospects of actually receiving benefits that are promised under plan provisions by establishing minimum funding standards to ensure funding of annual costs on a current basis, and to amortize past unfunded liabilities. It also established standards to ensure that a certain percentage of employees of a sponsoring employer would be permitted to participate in its retirement plans. Title I also established minimum vesting standards which require that an employee's right to retirement benefits be nonforfeitable in accordance with one of three alternative minimum vesting schedules.[5] And, to ensure that the vesting

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[5] It is noteworthy that ERISA is a statute of *minimum standards*, which permits plan sponsors either unilaterally or through

requirements applicable to employer contributions would be meaningful, Congress adopted minimum standards on the rate of benefit accruals.[6]

ERISA also explicitly altered certain other pre-ERISA concepts, other than those which affected plan provisions themselves. For example, Section 409(a), 29 U.S.C. §1109(a) increases the number of plan fiduciaries, and makes them personally liable for their responsibilities, obligations or duties.[7]

Perhaps the most radical new concept adopted by ERISA is its termination insurance program. This program constitutes Congress' recognition that the minimum funding standards might not be sufficient to protect participants against inadequate funding, and provides for the PBGC to pay benefits to participants in defined benefit plans, when the plans terminate without sufficient assets to pay "guaranteed" benefits.[8]

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collective bargaining to voluntarily adopt provisions which exceed those minimums.

[6] H. Rep. No. 93-807, 93rd Cong., 2d Sess. 60 (1974).

[7] Prior to ERISA pension trustees were not considered parties to the contract; therefore, they were not held liable for losses. *See* Glanzer, *The Impact of ERISA on Collective Bargaining*, 52 St. John's L. Rev. 531, n. 72 at 542 (1978).

[8] It is important to emphasize that this insurance program does not let employers "off the hook" for these insured benefits. For the PBGC receives no public funds. Rather, the program is funded primarily from two assessments, both of which are imposed upon *employers*. First, the PBGC collects premiums from employers based upon the number of employees participating in their plans. ERISA, § 4006, 29 U.S.C. § 1306. Second, when the PBGC pays benefits to participants in terminated plans, the sponsoring employer incurs a liability to the PBGC up to 30% of its net worth. ERISA, § 4062(b), 29 U.S.C. § 1362(b).

What the foregoing catalogue of ERISA provisions makes patently clear is that in areas where Congress intended to effect substantive changes in the law, Congress spoke with precision and clarity. That precision and clarity makes even more unavoidable the conclusion that in areas where Congress was silent, it intended that pre-ERISA practices would continue in effect.

B.

We turn next to an examination of the legislative and regulatory history which relates to pension plan offsets.

Offsetting was a permissible practice in benefit computations prior to ERISA's enactment, and that practice has been approved by Congress. There can be no dispute that, prior to ERISA, the Internal Revenue Code permitted integrating pension benefits with workers' compensation and other employer provided forms of compensation in tax qualified plans. When Congress enacted the Internal Revenue Code of 1954, 26 U.S.C. § 1 *et seq.*, it approved offsets of social security benefits and other "retirement benefits created under state or federal law." 26 U.S.C. § 401(a)(5).

In 1968 the Internal Revenue Service, interpreting Section 401(a)(5), held in Rev. Rul. 68-243 that:

> A program, like the social security program, that requires *employer contributions* and *makes benefits available to the general public* is a similar program for purposes of Part 4(j) of Revenue Ruling 65-178.
>
> * * *
>
> However, benefits under the plan may not be offset by disability damages recovered by an employee in a common law action against the employer.

Rev. Rul. 68-243, 1968-1 C.B. 157, 158 (emphasis added).

The next year the Service affirmed this ruling, stating:

> Benefits provided under a pension . . . plan may be integrated with those provided under a state or Federal program that, like the social security programs, requires *employer contribution* and makes benefits available to the *general public.* Thus, benefits payable under a state workmen's compensation law may be an acceptable offset against benefits payable under a qualified plan. However, benefits payable under a qualified plan may not be offset by disability damages recovered by an employee in a common law action against the employer.

Rev. Rul. 69-421, § 4(j)(4) 1969-2 C.B. 59, 72 (emphasis added).

If, in reenacting the new Code provisions which became a part of ERISA, Congress had either repealed Section 401(a)(5) or explicitly or implicitly signaled its intention to overrule or repeal the IRS' interpretation, then these pre-ERISA rulings would carry no weight. But Congress did neither.

Rather, Congress reenacted Section 401(a)(5) in substantially the same form. Indeed, the House Conference Report accompanying ERISA stated:

> . . . the conferees intend that the antidiscrimination rules of present law in areas other than the vesting schedule are not to be changed. Thus, the *present antidiscrimination rules* with respect to coverage, and with respect to contributions and *benefits are to remain in effect.* Also, the antidiscrimination rules may be applied with respect to benefit accruals.

H. Rep. No. 93-1280 93d Cong., 2d Sess. 277 (1974) (emphasis added).

It is a time honored rule that, "long-standing administrative interpretations applying to a substantially reenacted statute, [are] deemed to have received congressional approval and [have] the effect of law." *Commissioner* v. *Estate of Noel,* 380 U.S. 678, 682 (1965); *see also, NLRB* v. *Bell Aerospace,* 416 U.S. 267, 274 (1964); *Helvering* v. *Winmill,* 305 U.S. 79, 83 (1938).

Moreover, the Conference Committee's remark that the "present antidiscrimination rules" relating to contributions and benefits would "remain in effect" demonstrates that Congress was aware of these rules. Thus, Congress intended to reenact these pre-ERISA IRS rulings, and their vitality survives to this date.[9]

The correctness of the Chamber's viewpoint is made even more poignant and is further buttressed by recent legislative activity on this very issue. On January 24, 1979, Senators Harrison Williams and Jacob Javits, two of the leading Senate champions of ERISA, introduced S.209, titled "The ERISA Improvements Act of 1979." Section 126(a)(3) of that proposed legislation, which never became law, would have amended ERISA prospectively to prohibit offsetting pension benefits against workers' compensation benefits. This legislative proposal prompted a study commissioned

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[9] Since ERISA's enactment both the IRS and the PBGC have promulgated regulations adopting these concepts. See 29 C.F.R. § 2605 (1980) (PBGC's regulation defining "nonforfeitable" for purposes of Title IV), and 26 C.F.R. § 1.411(a)(4)(a) (the IRS regulation, which was discussed at length in the Third Circuit's opinion in this case).

by the U.S. Department of Labor and conducted by the Hay Associates. That study concluded, "there is nothing [presently] in ERISA to preclude a pension plan from reducing benefits when a beneficiary receives a workers' compensation award." Analysis of Pension Plans/Workers Compensation Offsets, April 13, 1979 at 1. The study also reported that "[t]he proposed legislation arose from a pending case in New Jersey involving a General Motors plant where an employee's pension benefit was reduced due to a Workers' Compensation offset."[10] *Id.* at 5 (emphasis added).

From the foregoing, the inferences are inescapable. The Senators were apprised of this very case which was then pending in the courts. Cognizant of the fact that the formula incorporated in the GM plan was a permitted practice, the Senators attempted to provide legislative relief via an amendment to ERISA. That legislative package never became law. Thus, the law as it existed in 1979 remains so today.

C.

The Chamber respectfully suggests that the view of the Internal Revenue Service, as evidenced by the pre- and post-ERISA revenue rulings discussed *supra,* that the integration of workmen's compensation benefits is permissible, represents a more constructive view of the relationship of various social benefits available today. Indeed, this is the view of at least two presidential advisory groups and Arthur Larson, a recognized expert on workmen's compensation.

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[10] *Buczynski et al.* v. *GM et al.,* No. 80-193, had been filed on August 5, 1977.

In his treatise on the subject, Mr. Larson argues that when one analyzes the various programs that provide financial benefits to employees, "[t]he crucial operative fact is that of wage loss; the cause of the wage loss merely dictates the category of legislation applicable." 4 Larson, Workmen's Compensation Law, § 97.10 at 18-19 (1980). Mr. Larson goes on to state that when employees suffer wage losses covered by several programs, the employee should not receive a package of benefits resulting in more than his actual wage. Rather, workmen's compensation, unemployment compensation, nonoccupational sickness and disability insurance, and old age and survivors' insurance should all be viewed as "parts of a system" which permits coordination of benefits. *Id.* at 18-19. And, such coordination of benefits is precisely what the challenged provisions of the pension plans at issue here provide.

Further, the National Commission on Workmen's Compensation has recognized the duplication of benefits that can occur because of the numerous sources of wage replacement income, and has recommended coordination of benefits. Report of the National Commission on State Workmen's Compensation Laws (1972) at 66. The Commission recommended to the President and Congress the appropriateness of integrating workers' compensation benefits "with other benefits provided by the employer. As in the past, we believe that employers and other interested parties, such as unions should be free to develop provisions which either supplement workmen's compensation benefits or reduce retirement or disability benefits paid for by the employer in the presence of workmen's compensation benefits." *Ibid.*

The recommendation of the Interdepartmental Workers Compensation Task Force is to the same effect. In its 1977 report to the President and Congress, the Task Force also recommended against permitting employees to "double dip" by receiving both workers' compensation and retirement income. Report to the President and Congress of the Policy Group of the Interdepartmental Workers' Compensation Task Force (January 19, 1977) at 15.

Workers' compensation benefits are, at least in part, designed as wage-replacements for employees incurring a work-related disability. And, as discussed above, these benefits are "parts of a system" of employer funded wage-replacement benefits. As discussed at length in part I-A of this brief, ERISA does not mandate the duplication of these benefits. Quite the contrary, there appears to be a consensus that it represents sound social planning to coordinate these benefits. To the extent that these benefits are employer financed,[11] the Chamber submits that this represents an equitable approach for both employers and employees, and worthy of sanction by this Court.

D.

We come, then, to the final reason why this Court should leave undisturbed the integration provisions in these plans; namely, because the participants of these plans, through their duly elected representatives, collectively bargained for a total compensation package which permitted the offsets at issue here.

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[11] Workmen's compensation benefits are, of course, fully paid by the employer, and in the two cases here, the pension plans are non-contributory.

It is almost a truism that the overall scheme of the National Labor Relations Act, 29 U.S.C. § 151 *et seq.*, is to provide the parties with the freedom to bargain over employment terms and conditions, and to thereby preclude the government (federal and state) from determining what those terms and conditions shall be. *Local 76, International Association of Machinists and Aerospace Workers* v. *Wisconsin Employment Relations Commission,* 427 U.S. 132 (1976); *H. K. Porter Company* v. *NLRB,* 397 U.S. 99 (1970); *Local 24 of International Brotherhood of Teamsters* v. *Oliver,* 358 U.S. 283 (1959). And, matters such as severance pay and retirement benefits are not only mandatory bargaining subjects, but also standard items in the usual collective bargaining agreement. *Wiley & Sons* v. *Livingston,* 376 U.S. 543 (1964); *Inland Steel Co.* v. *NLRB,* 170 F.2d 247 (7th Cir. 1948), *cert. denied,* 336 U.S. 960 (1949). Thus, pension plans and their terms cannot in any sense be viewed as peripheral to the concerns of federal labor policy. They are the direct concern of that policy which requires free and unfettered bargaining as to those matters.

For all of the reasons discussed from pages 5 through 14 *supra,* ERISA does not preclude the integration of workers' compensation benefits; and, both the legislative and regulatory history countenance such offsets. Moreover, it would pervert the very spirit of the collective bargaining process to permit individual employees to reopen the bargaining process absent a showing of bad faith or failure of fair representation on the part of their union. The Chamber submits that employees should not be permitted to use the judicial process for this purpose.

In this regard, the instant cases are clearly distinguishable from *Malone* v. *White Motor Corp.*, 435 U.S. 497 (1978). In *Malone,* the Court determined that, "Congress [in the 1958 Disclosure Act which preceded ERISA] . . . recognized and preserved state authority to regulate pension plans," 435 U.S. at 505; and "[b]ecause the 1958 Disclosure Act was in effect at the time of the crucial events in [*Malone*], the expression of congressional intent therein should control." *Ibid.*

In the instant cases, of course, ERISA is controlling; and, as we shall now demonstrate, preempts the state law in issue here.

II. ERISA Preempts New Jersey's Workers' Compensation Act.

To place ERISA's preemption provision in its proper context, we first look at the provisions of both the House and Senate bills which were subsequently rejected in conference; and, second, review the purpose and scope of the substituted provision as revealed in its legislative history.

The House passed the narrowest of the three preemption proposals on February 28, 1974. Section 514 of that bill limited the federal preemption to substantive areas governed by the bill. It stated, in pertinent part,

> This title shall supercede any and all laws of the States and of political subdivisions insofar as they may now or hereafter relate to the nonforfeitability of participant's benefits in employee benefit plans . . . , the funding requirements for such plans, the adequacy of financing such plans, portability requirements for such plans, or the insurance of pension benefits under such plans.

H.R. 2, 93d Cong., 1st Sess. 7.

The Senate-passed version would have defined preemption in terms of laws relating to the subject matter governed by the bill or the Welfare and Pension Plans Disclosure Act. S.4200, 93d Cong., 1st Sess. 221.

Both these bills would have made the federal preemption applicable to state laws only insofar as they duplicated or conflicted with *ERISA* or the *Disclosure Act*. However, the provision which subsequently became law rejected that approach and redefined the scope of the provision, making it applicable to all state laws as they "relate to" *ERISA covered employee benefit plans*. Section 514(a) of ERISA states that it "shall supercede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan . . . ." 29 U.S.C. § 1144(a). Clearly this re-formulated provision, by its express terms, demonstrated the congressional consensus to cover the field of employee benefits in much broader fashion than previously envisioned by either House.

The remarks of several proponents of the bill and members of the Conference Committee explaining the new provision offer considerable insight, making clear that Congress "comprehended the change and intended the statute to occupy the field." *Hewlett-Packard* v. *Barnes,* 425 F. Supp. 1294, 1299, (N.D. Cal. 1977) *aff'd* 571 F.2d 502 (9th Cir. 1978), *cert. denied* 439 U.S. 831.

First, Senator Javits' comments are especially helpful since they seem to have anticipated this very case:

> Both House and Senate bills provided for preemption, but—with one major exception appearing in the House bill—defined the perimeters of preemption in relation to the areas regulated by

> the bill. Such formulation raised the possibility of endless litigation over the validity of State action that might impinge on Federal regulation, as well as opening the door to multiple and potentially conflicting State laws hastily contrived to deal with some particular aspect of private welfare or pension benefit plans not clearly connected to the Federal regulatory scheme.

120 Cong. Rec. 29942 (1974).

Without casting aspersions on the intentions of the New Jersey Legislature, the *1977 amendment* of its Workers' Compensation Statute, which purports to relate to its non-federal workers' compensation program, must be viewed as an attempt to overrule the provisions of ERISA-covered employee benefit plans that include offset provisions, thereby unlawfully regulating those plans.

Second, Senator Harrison Williams, another champion of ERISA, and member of the Conference Committee, was unequivocal in describing the conference substitute as a provision to "eliminat[e] the threat of conflicting or inconsistent State and local regulation of *employee benefit plans.* This principle is intended to apply in its *broadest sense* to all actions of State or local governments, or any instrumentalities thereof . . . ." 120 Cong. Rec. 29933 (1974) (emphasis added).

And Representative Dent was equally clear:

> Finally, I wish to make note of what is to many the crowning achievement of this legislation, the reservation to Federal authority the sole power to regulate the field of *employee benefit plans.* With the preemption of the field, we round out the protection afforded participants by eliminating the threat of conflicting and inconsistent State and local regulation . . .

> The conferees, with the narrow exceptions specifically enumerated, applied this principle in its broadest sense to foreclose any non-Federal Regulation of *employee benefit plans*. Thus, the provisions of section 514 would reach any rule, regulation, practice or decision of any State, subdivision thereof or any agency or instrumentality thereof—including any professional society or association operating under color of law—which would affect any employee benefit plan as described in section 4(a) and not exempt under section 4(b).

120 Cong. Rec. 29197 (1974).

The Chamber respectfully submits that it stretches the plain language of section 514(a) beyond the bounds of reason to conclude that a state statute that interferes with the method of calculating benefits provided by ERISA-covered plans is not an attempt to regulate those plans. "The legislative history manifests that Congress intended to preempt all State laws that relate to employee benefit plans and not just state laws which purport to regulate an area expressly covered by ERISA." *Wadsworth* v. *Whaland,* 562 F.2d 70, 77 (1st Cir. 1977), *cert. denied* 435 U.S. 980 (1978). *See also Hewlett-Packard* v. *Barnes, supra.* "If a statute is to make sense, it must be read in the light of some assumed purpose." K. Llewellyn, *Remarks on the Theory of Appellate Decision and the Rule or Caucus About How Statutes Are to be Construed,* 3 Vand. L. Rev. 395, 400 (1950).

In this case, the Court's task is made easy. It is not necessary to "assume the legislative purpose." It has been explicitly enunciated. Congress has decreed

that, in the interest of avoiding inconsistency and conflict in employee benefit plans, state and local governments are prohibited from regulating such plans.

For these reasons, we request this Court to declare N.J.S.A. § 34:15-29 preempted for purposes of ERISA-covered plans.

CONCLUSION

For all of the foregoing reasons, Amicus Chamber of Commerce submits that the judgment of the Court below should be affirmed.

Respectfully submitted,

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